



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 12, 1996

The Honorable Bill Weinacht  
Reeves County Attorney  
P.O. Box 825  
Pecos, Texas 79772

Letter Opinion No. 96-135

Re: Whether a county commissioner violates section 81.002 of the Local Government Code by signing a contract with the tax assessor-collector for payment of delinquent taxes pursuant to section 33.02 of the Tax Code (ID# 38603)

Dear Mr. Weinacht:

You ask whether a county commissioner of Reeves County has violated section 81.002 of the Local Government Code by entering into a contract with the Reeves County tax-assessor collector for the installment payment of delinquent taxes. The "collector for a taxing unit that collects its own taxes" is authorized by section 33.02 of the Tax Code to enter into an agreement with a delinquent taxpayer for payment of the tax, penalties, and interest in installments. Interest accrues on the unpaid balance during the term of the agreement. The property owner's execution of the agreement is "an irrevocable admission of liability for all taxes, penalties, and interest that are subject to the agreement."<sup>1</sup> The taxpayer's property may not be seized and sold and a suit may not be filed to collect a delinquent tax subject to the agreement unless he or she (1) fails to make a payment required by the agreement, (2) fails to pay other property taxes collected by the tax assessor collector, or (3) breaches any other condition of the agreement.<sup>2</sup>

Section 81.002 of the Local Government Code provides that before taking office a county commissioner must swear in writing that he or she "will not be interested, directly or indirectly, in a contract with or claim against the county," with certain exceptions that are not relevant here. The "interest" in this provision is a pecuniary interest,<sup>3</sup> which necessarily involves some opportunity for personal financial gain to the party contracting with the county.<sup>4</sup> Contracts entered into in violation

---

<sup>1</sup>Tax Code § 33.02(c).

<sup>2</sup>*Id.* § 33.02(c), (d).

<sup>3</sup>*City of Edinburg v. Ellis*, 59 S.W.2d 99 (Tex. 1933). "Pecuniary" is defined as "consisting of or measured in money," "of or relating to money." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 866 (1983).

<sup>4</sup>A public officer's indirect pecuniary interest in a public contract is sufficient to invoke the statutory or common law conflict-of-interest rules. A contract by Bexar County to purchase voting machines was held invalid because the county commissioner who cast the deciding vote had an exclusive sales contract with the manufacturer, even though he received no commission on sales in Bexar County. *Bexar County v. Wentworth*, 378 S.W.2d 126 (Tex. Civ. App.--San Antonio 1964, writ ref'd n.r.e.). See also Attorney General Opinion H-916 (1976) at 2 (school district could not contract with

(continued...)

of this provision are invalid.<sup>5</sup> Section 81.002 has been impliedly repealed to the extent of conflict by Local Government Code chapter 171, which addresses conflicts of interest involving local public officials.<sup>6</sup> Chapter 171 requires a local public official with a substantial interest in a business entity or in real property to recuse himself from a vote or decision on a matter involving the business entity or real property if action on the matter will have a special economic effect on the business entity or on the value of the property. Since the contract for payment of delinquent taxes is not subject to a vote by the commissioners court, chapter 171 does not apply to it.

The oath required by section 81.002 of the Local Government Code embodies the “well-established and salutary doctrine that he who is intrusted with the business of others cannot be allowed to make such business an object of pecuniary profit to himself.”<sup>7</sup> “At common law<sup>8</sup> and generally under statutory enactment, it is now established beyond question that a contract made by an officer of a municipality with himself, or in which he is interested, is contrary to public policy and tainted with illegality; and this rule applies whether such officer acts alone on behalf of the municipality, or as a member of a board or council.”<sup>9</sup> The purpose of this rule is to ensure the officer’s undivided loyalty to the political subdivision.<sup>10</sup>

The contract you inquire about does not involve self-dealing by the county commissioner, since he has contracted with the tax collector and not the commissioners court.<sup>11</sup> Section 81.002, however, applies to “a contract with or claim against the county” and is not limited to contracts with

---

<sup>4</sup>(...continued)

company that employed school board member in managerial capacity because his interest in welfare of company would tend to affect his judgment).

<sup>5</sup>*Bexar County*, 378 S.W.2d at 129.

<sup>6</sup>Attorney General Opinion DM-279 (1993).

<sup>7</sup>2 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS §§ 772-73, at 1140-47 (5th ed. 1911) (as quoted in Attorney General Opinion WW-1362 (1962) at 3).

<sup>8</sup>*See Meyers v. Walker*, 276 S.W. 305 (Tex. Civ. App.--Eastland 1925, no writ) (common-law conflict-of-interest rule).

<sup>9</sup>2 DILLON, *supra* note 7 (footnote added).

<sup>10</sup>*Bexar County*, 378 S.W.2d at 129.

<sup>11</sup>The commissioners court is ordinarily the contracting agent for the county. *Anderson v. Wood*, 152 S.W.2d 1084 (Tex. 1941) (sheriff has no authority to execute contracts on behalf of county).

the county entered into by the commissioners court.<sup>12</sup> Since the tax assessor-collector collects taxes on behalf of the county, we conclude that the contract is a contract with the county.

It is significant, however, that the county commissioner has entered into the contract for installment payment of delinquent taxes in his capacity as a taxpayer, exercising a payment opportunity available to other delinquent taxpayers. Conflict of interest provisions such as section 81.002 have been held to be inapplicable where the officer's interest in a contract is the same as that of any other citizen, for example, where officers who set public utility rates in a political subdivision also purchase utilities from the source they regulate.<sup>13</sup> A Texas case relying on this rule involved a mayor who was subject to former article 373 of the Penal Code,<sup>14</sup> which prohibited officers of a city or county from becoming pecuniarily interested in any contract made by the city or county.<sup>15</sup> The city council had voted to pave certain streets, the costs to be assessed against the adjacent property owners. The mayor of the city was a large creditor and large stockholder of a company that was located on a street designated for paving. The court relied on cases from other states to conclude that the interest of a member of a city board arising from their ownership of property directly affected by improvement does not disqualify him to act.<sup>16</sup>

Section 33.02 of the Tax Code provides a method of collecting delinquent taxes, interest, and penalties that requires the taxpayer's agreement to be effective. The terms of the agreement are established by statute, not by negotiations between the tax collector and taxpayer. In our opinion, the county commissioner, in using this method to pay back taxes to the county, is in the same position as any other taxpayer who pays back taxes in this way. We conclude that the contract between a county commissioner and county tax assessor-collector for payment of delinquent county taxes, penalties, and interest, is not subject to section 81.002 of the Local Government Code, and the county commissioner has not violated that provision by entering into the contract.

---

<sup>12</sup>See Local Gov't Code § 262.001 (commissioners court may appoint agent to make contract on behalf of county); *Knippa v. Stewart Iron Works*, 66 S.W. 322 (Tex. Civ. App.--1902, no writ) (county commissioner could not collect on claim purchased from contractor on jail construction project); Attorney General Opinion JM-927 (1988) (county commissioner could not act as surety on bail bond for person charged with offense in his county, because bail bond is considered contract between government and defendant and his surety).

<sup>13</sup>63 C.J.S. *Municipal Corporations* § 991, at 559; see also 10A EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 29.98, at 23 (3d ed. 1990).

<sup>14</sup>*Repealed by Act of May 23, 1973, 63d Leg., R.S., ch. 399, § 3(a), 1973 Tex. Gen. Laws 883, 991.*

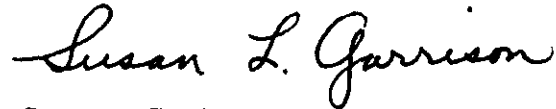
<sup>15</sup>*Seymour v. Security Trust Co.*, 55 S.W.2d 853, 857-58 (Tex. Civ. App.--Galveston 1932, writ dismissed).

<sup>16</sup>*Id.* at 860; see also *Farley v. Uvalde Paving Co.*, 74 S.W.2d 288 (Tex. Civ. App.--El Paso 1934, no writ) (following *Seymour*, 55 S.W.2d at 857-58).

**S U M M A R Y**

A contract between a county commissioner and the tax assessor-collector for the installment payment of delinquent taxes, penalties, and interest under section 33.02 of the Tax Code is not subject to section 81.002 of the Local Government Code.

Yours very truly,

A handwritten signature in black ink that reads "Susan L. Garrison". The signature is written in a cursive style with a large, flowing "S" and a distinct "L" and "G".

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee